

HOUSE No. 1484

By Mr. Koutoujian of Waltham, petition of Peter J. Koutoujian and others for legislation to encourage the growth of the biotechnology industry in the Commonwealth through tax benefit incentives. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

PETITION OF:

Peter J. Koutoujian	Karyn E. Polito
Kevin G. Honan	Karen E. Spilka
John W. Scibak	Stephen M. Brewer
Susan C. Fargo	Thomas J. O'Brien
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In the Year Two Thousand and Five.

AN ACT TO ENCOURAGE THE GROWTH OF THE BIOTECHNOLOGY INDUSTRY IN MASSACHUSETTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Paragraph four of section thirty of chapter sixty-
2 three of the General Laws is hereby amended by adding the
3 following sentence thereof:—

4 A deduction shall also be allowed to a biotechnology company
5 for any private financial assistance paid to it that qualifies for the
6 business tax benefit certificate transfer program set forth in
7 section thirty-eight R of this chapter.

1 SECTION 2. Paragraph (h) of section thirty-one A of chapter
2 sixty-three of the General Laws is hereby amended by deleting the
3 second sentence of said paragraph and replacing it with the
4 following sentence:—

5 Such credit may be applied against the excise liability of any
6 other corporation pursuant to an election under the provisions of
7 section thirty-two B.

1 SECTION 3. Section thirty-one C of chapter sixty-three of the
2 General Laws is hereby amended to read as follows:

3 (a) As used in this section, the following terms shall have the
4 following meanings:—

5 “Biotechnology Company:” A company primarily engaged in
6 commercial biological research and development or the sale of
7 pharmaceutical products.

8 “Full-time employee”, an employee as defined in sections one
9 and three of chapter one hundred and fifty-one A and who has
10 been paid by the corporation during its taxable year an amount at
11 least equal to the maximum amount of “wages” with respect to
12 which an employer is required to make contributions pursuant to
13 section fourteen of said chapter and said amount is includable in
14 the numerator of the payroll factor of the income apportionment
15 formula under the provisions of section thirty-eight.

16 “Increase in the number of full-time employees employed by
17 the corporation”, (i) in the case of a corporation having full-time
18 employees in its taxable year ending last prior to December thirty-
19 first, two thousand and three, the excess of the number of full-
20 time employees employed by the corporation during its taxable
21 year over the number determined by multiplying the number of
22 full-time employees employed by the corporation during its tax-
23 able year ending last prior to December thirty-first, two thousand
24 and three, by the applicable coefficient for the taxable year, as
25 herein set forth.

26 The coefficient shall be one and three hundredths for taxable
27 years ended on or after December thirty-first, two thousand and
28 three, and before December thirty-first, two thousand and four;
29 one and six hundredths for taxable years ended on or after
30 December thirty-first, two thousand and four, and before
31 December thirty-first, two thousand and five; and one and nine
32 hundredths for taxable years ended on or after December thirty-
33 first, two thousand and five, and before December thirty-first, two
34 thousand and six.

35 (ii) in the case of a corporation not having a taxable year
36 ending prior to December thirty-first, two thousand and three, by
37 reason of recent organization or registration or by reason of not
38 being subject to taxation in the Commonwealth or not having any
39 full-time employees in its taxable year ending last prior to

40 December thirty-first, two thousand and three, the excess of the
41 number of full-time employees employed by the corporation
42 during its taxable year over the number determined by multiplying
43 the number of full-time employees employed by the corporation in
44 the first taxable year in which the corporation may take the credit
45 provided for in this section by the applicable coefficient for the
46 taxable year as herein set forth. The coefficient shall be zero for
47 the first taxable year. The coefficient shall be one and twenty hun-
48 dredths for the second taxable year. The coefficient shall be one
49 and forty hundredths for the third taxable year.

50 (b) A biotechnology company that is subject to tax under this
51 chapter shall be allowed a credit as hereinafter provided against
52 its excise due under this chapter. The amount of such credit shall
53 be the amount determined by multiplying one hundred dollars by
54 the increase in the number of full-time employees employed by
55 the corporation during the taxable year, as herein provided.

56 (c) For a corporation having a taxable year of less than twelve
57 months, herein referred to as a short period, an employee shall be
58 deemed to be a full-time employee if the amount of the remunera-
59 tion paid to him or her by the corporation during the short period
60 when multiplied by twelve and divided by the number of months
61 in the short period is at least equal to the maximum amount of
62 wages with respect to which an employer is required to make con-
63 tributions pursuant to section fourteen of chapter one hundred and
64 fifty-one A. The credit for a short period shall be computed in the
65 same manner as for a full taxable year but shall be reduced by
66 multiplying the credit so determined by the number of months in
67 the short period and dividing the result by twelve.

68 (d) The credit allowed under this section shall be in addition to
69 any other credits allowed under this chapter; provided, however,
70 that the sum of the credits allowed under this chapter shall not
71 reduce the excise to less than the amount due under subsection (b)
72 of section thirty-two or subsection (b) of section thirty-nine.

1 SECTION 4. Section thirty-eight C of chapter 63 of the General
2 Laws is hereby amended by deleting the third sentence in said
3 section and replacing it with the following sentence:—

4 A domestic research and development corporation for the pur-
5 poses of this section is one whose principal activity is research

6 and development and which, during the taxable year, derives more
7 than two-thirds of its receipts from or incurs more than one-third
8 of its expenditures in conducting such activity.

1 SECTION 5. Section thirty-eight N of chapter 63 of the
2 General Laws is hereby amended by deleting the word “five” in
3 the first sentence of paragraph (a) thereof and replacing it with the
4 word “fifteen”.

1 SECTION 6. Section thirty-eight N of Chapter 63 of the
2 General Laws is hereby further amended by deleting paragraph (b)
3 thereof and replacing it with the following paragraph:—

4 (b) Tangible personal property which is leased by a corporation
5 pursuant to an operating lease shall be eligible for the credit
6 allowed by this section; provided, however, that the credit shall be
7 subject to conditions similar to those set forth in paragraph (i) of
8 section thirty-one A of this chapter.

1 SECTION 7. Chapter 63 of the General Laws is hereby
2 amended by adding the following section after section 38Q
3 thereof:—

4 Section 38R. (a) As used in this section, the following terms
5 shall have the following meanings: —

6 “Biotechnology Company.” A company primarily engaged in
7 commercial biological research and development or the sale of
8 pharmaceutical products.

9 “Council”, the economic assistance coordinating council in the
10 office of business development.

11 “Program”, the business tax benefit certificate transfer pro-
12 gram.

13 “Purchasing corporation”, a corporation that is subject to tax
14 under this chapter and that provides financial assistance to a
15 biotechnology company in exchange for a tax benefit certificate.

16 “Tax benefits”, the net operating loss carryforward described in
17 paragraph five of section thirty of this chapter; the investment
18 credit set forth in section thirty-one A of this chapter; the credit
19 for increased employment set forth in section thirty-one C of this
20 chapter; the vanpool credit set forth in section thirty-one E of this
21 chapter; the credit for research expenses set forth in section thirty-

22 eight M of this chapter; the credit with respect to certified projects
23 set forth in section thirty-eight N of this chapter; the harbor main-
24 tenance tax credit set forth in section thirty-eight P of this chapter;
25 and the environmental response action credit set forth in section
26 thirty-eight Q of this chapter.

27 “Tax benefit amounts eligible for transfer”, in the case of
28 credits, the aggregate amount of credits that the corporation gen-
29 erated but was not able to use as of the close of the last taxable
30 year for which a return was filed, because of limited tax liability
31 or any limitations upon use of credits set forth in this chapter; in
32 the case of net operating loss carryforwards, the aggregate amount
33 of the net operating loss carryforwards that the corporation gener-
34 ated but was not able to use as of the close of the last taxable year
35 for which a return was filed, because of limited tax liability or any
36 limitations upon use of such carryforwards set forth in this
37 chapter, multiplied by the Massachusetts apportionment factor of
38 the corporation that generated the carryforwards for the last tax-
39 able year for which a return was filed, multiplied by nine and one-
40 half percent.

41 (b) The council shall establish a business tax benefit certificate
42 transfer program to allow biotechnology companies doing busi-
43 ness in the commonwealth with unused tax benefits to surrender
44 such benefits for use by purchasing corporations in exchange for
45 private financial assistance to be provided by such corporations to
46 assist in the funding of costs incurred by the biotechnology com-
47 panies.

48 The private financial assistance shall be used to fund expenses
49 incurred in connection with the operation of the biotechnology
50 company in the commonwealth, including but not limited to costs
51 associated with fixed assets, such as the construction and acquisi-
52 tion and development of real estate, materials, start-up, tenant fit-
53 out, working capital, salaries, research and development
54 expenditures, and any other expenses determined by the council to
55 be necessary to carry out the purposes of the program.

56 (c) A biotechnology company that wishes to participate in the
57 program shall file an application with the council, on a form pre-
58 scribed by the council, that sets forth the tax benefit amounts eli-
59 gible for transfer, the use to which the biotechnology company
60 intends to put the private financial assistance to be provided, the

61 identity of the purchasing corporation, the amount of the financial
62 assistance to be provided, and such other information as the
63 council may require. No such tax benefits may be surrendered
64 unless the purchasing corporation provides financial assistance in
65 an amount at least equal to seventy-five percent of the tax benefit
66 amounts eligible for transfer.

67 The council shall review such application and, if the proposed
68 transfer meets the requirements set forth in this section, it shall,
69 upon receipt of adequate evidence that the purchasing corporation
70 has provided the specified financial assistance, issue a certificate
71 to the purchasing corporation reflecting the tax benefit amounts
72 transferred, a copy of which shall be attached to each tax return
73 filed by a purchasing corporation in which such tax benefits are
74 used.

75 (d) The purchasing corporation shall treat the tax benefit
76 amounts purchased under the program as a credit against its excise
77 under this chapter. The purchasing corporation must use the tax
78 benefit amounts so treated in tax returns filed within five years of
79 the issuance of the certificate, after which the benefits will be con-
80 sidered to have expired. The purchasing corporation may not use
81 the tax benefit amounts to reduce the excise to less than the
82 amount due under subsection (b) of section thirty-two, subsection
83 (b) of section thirty-nine or section sixty-seven and any act in
84 addition thereto.

85 (e) No biotechnology company that has surrendered tax bene-
86 fits under the program may use such benefits to reduce its tax lia-
87 bility under this chapter.

88 (f) The commissioner of revenue shall promulgate regulations
89 implementing the provisions of this section.

1 SECTION 8. Section forty-two B of chapter 63 of the General
2 Laws is hereby amended by deleting the third sentence in said
3 section and replacing it with the following sentence:—

4 A foreign research and development corporation for the pur-
5 poses of this section is one whose principal activity in the com-
6 monwealth is research and development and which, during the
7 taxable year, derives more than two-thirds of its receipts assign-
8 able to the commonwealth from, or incurs more than one-third of

9 its expenditures attributable to the commonwealth in conducting,
10 such activity.

1 SECTION 9. Chapter sixty-three of the General Laws is hereby
2 amended by adding the following section after section 42B:—

3 Section 42C. (a) In the case of the acquisition of assets of a
4 domestic or foreign business corporation by another such corpora-
5 tion (1) in a distribution to which section three hundred and thirty-
6 two of the Code applies; or (2) in a transfer to which section three
7 hundred and sixty-one of the Code applies, but only if the transfer
8 is in connection with a reorganization described in subparagraph
9 (A), (C), (D), (F) or (G) of paragraph (a)(1) of section three hun-
10 dred and sixty-eight of the Code, the acquiring corporation shall
11 succeed to and take into account, as of the close of the day of dis-
12 tribution or transfer, the net operating loss carryforwards and
13 credits of the distributor or transferor corporation, subject to con-
14 ditions and limitations similar to those that apply under section
15 three hundred and eighty-one of the Code for federal tax purposes.

16 (b) The commissioner of revenue shall promulgate regulations
17 implementing the provisions of this section.

1 SECTION 10. Paragraph (r) of section 6 of chapter sixty-four H
2 of the General Laws is hereby amended by adding the following
3 sentence at the end of said paragraph:—

4 Nothing in this paragraph shall be construed as precluding
5 qualification for exemption in cases in which otherwise-qualifying
6 materials are purchased by a construction contractor for incorpo-
7 ration into real estate.

1 SECTION 11. Paragraph (s) of section 6 of chapter sixty-four H
2 of the General Laws is hereby amended by adding the following
3 sentence at the end of said paragraph:—

4 Nothing in this paragraph shall be construed as precluding
5 qualification for exemption in cases in which otherwise-qualifying
6 machinery or replacement parts thereof are purchased by a con-
7 struction contractor for incorporation into real estate.

1 SECTION 12. Section 6 of chapter sixty-four H of the General
2 Laws is hereby amended by adding the following paragraph
3 thereto after paragraph (tt) thereof:—

4 (uu) Sales of building materials to be incorporated into an
5 industrial plant. For the purpose of this paragraph, the term
6 “industrial plant” shall mean a factory at a fixed location pri-
7 marily engaged in the manufacture, conversion or processing of
8 tangible personal property to be sold in the regular course of busi-
9 ness.

1 SECTION 13. Section 6 of chapter sixty-four H of the General
2 Laws is hereby further amended by adding the following para-
3 graph thereto after paragraph (uu) thereof:—

4 (vv) Sales of tangible personal property, including building
5 materials, the cost of which is allowable in determining the credit
6 set forth in section thirty-eight N of this chapter.

1 SECTION 14. Section nine of this act shall take effect for all
2 open taxable years. Sections ten, eleven, twelve and thirteen of
3 this act shall take effect with respect to purchases made on or after
4 July 1, 2003. All other provisions of this act shall take effect with
5 respect to taxable years ending on or after December thirty-first,
6 two thousand and three; provided, however, that nothing herein
7 shall be construed as precluding the transfer or use under section
8 seven of this act of tax benefit amounts attributable to tax benefits
9 that were generated in periods ending prior to such date.